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**PLAINTIFF ACTING PRO SE**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

TRI HUYNH.

Case No. 3:18-cv-01631-VC

**Plaintiff(s),**

VS.

WAL-MART STORES, INC., a Delaware Corporation; WAL-MART ASSOCIATES, INC., a Delaware Corporation; WAL-MART.COM, INC., a Delaware Corporation; and DOES 1 through 50, inclusive.

**Defendant(s).**

**NOTICE OF MOTION AND MOTION  
FOR ORDER TO ALTER THE JUDG-  
MENT UNDER FRCIVP 60(b) AND  
FOR RECONSIDERATION OF ORDER  
GRANTING SUMMARY JUDGEMENT  
UNDER FRVIP 59(e)**

## Hearing:

Date: March 19, 2020  
Time: 10:00 a.m.  
Place: Courtroom 4, 17th Floor  
Judge: Hon. Vince Chhabria

## Trial:

Date: Vacated on Nov 5, 2019  
Judge: Hon. Vince Chhabria

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE that on MARCH 19, 2020 AT 10:00AM**, or as soon thereaf-  
3 ter as the matter may be heard in Courtroom 4 - 17th Floor 450 Golden Gate Avenue, San Fran-  
4 cisco, CA 94102, before Honorable Vince Chhabria, Plaintiff Tri Huynh (“Huynh”) will and  
5 hereby does move this Court for an order altering and/or vacating the Judgment entered on Janu-  
6 ary 14, 2020 (Dkt. 169) under F.R.C.P 60(b) and reconsideration of the order granting Walmart’s  
7 motion for summary judgment on January 14, 2020 (Dkt. 167) under F.R.C.P 59(e) with respect  
8 to Huynh’s claims under the Whistleblower Retaliation in Violation of the Sarbanes-Oxley Act  
9 (18 U.S.C. §1514A, et seq.), Wrongful Termination in Violation of Public Policy, and Retaliation  
10 in Violation of California Labor Code §1102.5 against Walmart.

11 Reconsideration is appropriate in this instance because the Court’s ruling in granting  
12 Walmart’s Motion for Summary Judgment with respect to the three claims outlined above was  
13 based on manifest errors of law or fact.

14 The Court erred when it concluded that Huynh failed to produce enough evidence and/or  
15 zero evidence to support a prima facie case with respect to Prong #1 (Huynh engaged in pro-  
16 tected activity), Prong #4 (the protected activity was a contributing factor or casually connected to  
17 the unfavorable action, and to defeat Walmart’s affirmative defense by proving that Walmart’s  
18 legitimate, nonretaliatory reason for Huynh’s termination is mere pretext.

19 Below are three main reasons why the Courting ruling was bases on manifest error of fact.

20 **First**, the Court found that Huynh didn’t engage in protected activity because he failed to  
21 proffer enough evidence to prove that he raised his complaint to Seth Beal on 10/4/16 regarding  
22 Walmart’s unlawful conducts. The Court’s finding was erroneous because the Court has omitted  
23 undisputable evidence that on 12/20/16 and 1/4/17 Huynh emailed his complaint to Walmart to  
24 raise the issues of overcharging seller commission fees, failure to process customer returns, and  
25 manipulation and inflation of the total number of SKUs on Marketplace to portray a rosy picture  
26 of the state of Walmart’s Marketplace. Therefore, the undisputed evidence above proved that  
27 Huynh did in fact engage in protected activity.

28

1           **Second**, the Court ruled that a three-month temporal proximity between his protected ac-  
 2 tivity and the adverse action was not sufficient to prove causation because Walmart's stated rea-  
 3 sons for terminating Huynh's employment as part of the layoff are so strong. The ruling was  
 4 based on manifest error of fact because the Court overlooked the evidence submitted by Huynh to  
 5 the Court prior to the Court's 1/14/20 ruling.

6           The evidence below proved that Huynh's protected activity was causally connected to the  
 7 unfavorable action for three main reasons. A) Seth Beal knew about Huynh's protected activities  
 8 on 12/20/16 and 1/4/17, B) Walmart provided shifting explanations for Huynh's termination, and  
 9 C) Walmart's Senior Executives made the decision to fire Huynh within 8.5 hours after Huynh  
 10 emailed his complaint to Marc Lore on 1/4/17. The evidence proved there was causation between  
 11 Huynh's protected activity and the adverse action.

12           Walmart's legitimate, nonretaliatory reason for Huynh's termination is mere pretext be-  
 13 cause it is unworthy of credence for three salient reasons.

14           **1**) Walmart hired 10 new FTEs right smack in the middle of the reorganization and the  
 15 RIF, concealed this fact, and Beal missed the target cost saving of 10% for Marketplace by 22%,  
 16 **2**) Walmart backdated the creation date of the final Marketplace RIF list that Walmart mailed to  
 17 impacted Marketplace, and **3**) Walmart made misleading statements to OSHA on 8/31/17 when it  
 18 claimed that the Market-place RIF list was finalized prior to 12/20/16 when in the fact it was not  
 19 finalized until 1/18/17.

20           **Third**, the Court was dead wrong when it ruled that Huynh has produced "zero evidence"  
 21 of pretext to defeat Walmart's affirmative defense. The robust and overwhelming evidence dis-  
 22 cussed above proves that Walmart's legitimate and nonretaliatory reason for Huynh's termination  
 23 is mere pretext. Huynh has unquestionable defeated Walmart's affirmative defense.

24           Taken together the evidence discussed above is so strong and powerful that Walmart  
 25 should be liable for Huynh's claims under the Whistleblower Retaliation in Violation of the Sar-  
 26 banes-Oxley Act (18 U.S.C. §1514A, et seq.), Retaliation in Violation of California Labor Code  
 27 §1102.5 as well as the Wrongful Termination in Violation of Public Policy.

1 In conclusion, Huynh respectfully moves the Court to 1) deny Walmart's Motion for Sum-  
2 mary Judgement in Dkt. 167, 2) vacate the Court's Judgement in Dkt. 169, 3) grant Huynh's Mo-  
3 tion for Summary Judgement sua sponte against Walmart for his three claims, and 4) rule that  
4 Walmart is liable for economic and non-economic damages then let this case go to trial so the  
5 jury could determine the amount of the damages.

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7 DATED: February 9, 2020  
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By: *Tri M. Huynh*  
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10 Tri M. Huynh  
11 Plaintiff Acting Pro Se  
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